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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

FILE: [REDACTED]
EAC 06 013 53001

Office: NEBRASKA SERVICE CENTER

Date: APR 01 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and dismissed as untimely a subsequent motion. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification as an "alien of extraordinary ability," pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

On December 14, 2006, the director denied the petition. The AAO dismissed a subsequent appeal on October 22, 2008. On November 25, 2008, 34 days after the AAO's decision, U.S. Citizenship and Immigration Services (USCIS) received the petitioner's motion. The director rejected the appeal pursuant to 8 C.F.R. § 103.2(a)(7) because the petitioner had included the incorrect fee. The director received the petitioner's motion with the correct fee on December 15, 2008.

The regulation at 8 C.F.R. § 103.2(a)(7) states that a filing is properly filed when received with the necessary signature and required filing fee. Thus, the filing date of the motion is December 15, 2008.

Service records reveal that the AAO's October 22, 2008 notice was mailed to the petitioner at his address of record and to counsel at his address of record. The petitioner has not demonstrated that he or counsel advised the AAO of any change of address.

On September 28, 2009, the AAO rejected the December 15, 2008 motion as untimely filed. The AAO noted that USCIS received the motion 54 days after the AAO's notice dismissing the appeal. The AAO further noted that the receipt date of the motion with the incorrect fee was 34 days after the AAO's notice dismissing the appeal. Thus, that filing was also untimely.

In support of his current motion, the petitioner submitted an email dated December 12, 2008 from former counsel advising that the previous motion had been rejected "b/c you had wrongly put \$580 on

the check.” The petitioner also submitted evidence that he left the United States Saturday, November 21, 2008, well after the AAO issued its decision dismissing the appeal. The petitioner asserts that he “couldn’t receive the notice from AAO.”

The petitioner concedes that the initial filing contained the wrong fee and does not contest that the motion was filed with the correct fee on December 15, 2008. The petitioner was not absent from the United States until well after the AAO’s issued the October 22, 2008 decision. Thus, the petitioner had an opportunity to file the appeal timely with the correct fee. As such, the petitioner has not overcome the fact that he filed the initial filing untimely and with the incorrect fee and did not file the motion with the correct fee until 54 days after the AAO’s decision. For these reasons, we reaffirm our previous decision that the petitioner’s December 15, 2008 motion was untimely filed.

ORDER: The AAO’s decision of September 28, 2009 is affirmed. The petition is denied.